

DOC. # 5218
ADOPTED 8/14/89

Text Amendment Application No.
Boston Redevelopment Authority
Disclosure of Beneficial Interests

TO THE ZONING COMMISSION OF THE CITY OF BOSTON:

The Boston Redevelopment Authority petitions to amend the text of the Boston Zoning Code, as established under Chapter 665 of the Acts of 1956 as amended, as follows.

By inserting after Article 31 the following article:

**ARTICLE 31A
DISCLOSURE OF BENEFICIAL INTERESTS**

SECTION 31A-1. Statement of Purpose. This Article establishes a process for the full disclosure of beneficial interests in large-scale development projects which require zoning relief. The purposes of such disclosure include without limitation the following: to inform public decision-makers and the public-at-large of the identity and extent of the interest held by all persons having any beneficial interest in property which is subject to public review and approval by the Boston Redevelopment Authority, the Zoning Commission, or the Board of Appeal, and thereby improve municipal land use decisions and foster public understanding and trust in the process of such review and approval; and to provide a process under which officials making land use decisions can identify and avoid conflicts of interest.

SECTION 31A-2. Definitions. For the purposes of this article only, the following words and phrases have the meanings indicated:

1. "Applicant" means any Person having a legal or equitable interest in a Proposed Project subject to the provisions of this article or the authorized agent of any such Person.

2. "Beneficial Interest" means any legal or equitable direct or indirect ownership interest, whether as an individual or through a partnership, corporation, trust, or other legal entity, or otherwise, or any actual or potential profit, benefit, or advantage resulting from any such ownership interest, or a contractual right to any such ownership interest, whether or not contingent.
3. "Disclosure Statement" means the statement required by Section 31A-4 of this article.
4. "Person" means an individual, partnership, corporation, trust, and other legal entity.
5. "Proposed Project" means the erection or extension of any structure or part thereof, or the change of use of any structure or land, for which the Applicant is required to obtain a building or use permit.
6. "Zoning Relief" means any zoning variance, exception, conditional use permit, interim planning permit, or zoning map or text change, or any other relief granted by the Zoning Commission or the Board of Appeal.

SECTION 31A-3. Applicability. This article applies to any Proposed Project which requires Zoning Relief and which falls into any of the following categories:

(a) construction of a building or structure having a gross floor area of one hundred thousand (100,000) or more square feet; (b) enlargement or construction

of a building or structure so as to increase its gross floor area by one hundred thousand (100,000) or more square feet; or (c) establishment or change of the uses of gross floor area of one hundred thousand (100,000) or more square feet.

However, any Proposed Project for which Zoning Relief has been granted by the Board of Appeal prior to the first notice of hearing before the Zoning Commission for the adoption of this article is exempt from the provisions of this article.

SECTION 31A-4. Disclosure Statements of Persons Having Beneficial Interests in Proposed Projects.

1. **Disclosure of Beneficial Interests in Proposed Projects.** The Zoning Commission and Board of Appeal shall grant Zoning Relief for a Proposed Project only if the Applicant for such Proposed Project has filed a statement, signed under penalties of perjury, with the City Clerk, the Boston Redevelopment Authority, with the Zoning Commission in instances in which the Zoning Commission shall act on the application for Zoning Relief, and with the Board of Appeal in instances in which the Board of Appeal shall act on the application for Zoning Relief disclosing the true names and addresses of all Persons who have a Beneficial Interest in such Proposed Project, the amount of their Beneficial Interest accurate to within one-tenth of one percent, and the names and addresses of all firms and personal corporations employing attorneys, real estate brokers, architects, engineers, planners, surveyors, and all agents who have acted on behalf of any of the foregoing with respect to the application. The provisions of this section shall not apply to an owner of a corporation, partnership, or trust, the stock of which ownership interest is listed for sale to the public with the

Securities and Exchange Commission, if such owner holds less than ten percent of the corporation, partnership, or trust.

2. **Form of Disclosure Statement.** The statement required by this section shall be in the form shown in Appendix A to this article. If the Applicant filing the statement required by this section is a corporation, the statement shall be signed by a duly authorized officer thereof.
3. **Circulation of Disclosure Statement.** The Disclosure Statement shall be circulated to all members of the Zoning Commission, Board of Appeal, and Boston Redevelopment Authority who are eligible to vote upon the application for Zoning Relief.

SECTION 31A-5. **Public Records.** The City Clerk shall make the Disclosure Statements required by Section 31A-4 available to the public upon request.

SECTION 31A-6. **Updating Disclosure Statements.** The Applicant shall file with the City Clerk updated Disclosure Statements containing all the information required in Section 31A-4 annually from the date of issuance of Zoning Relief. The updated Disclosure Statements shall specifically identify the differences in such information from that provided in the immediately preceding Disclosure Statement filed in connection with such Proposed Project. An updated Disclosure Statement shall be filed for a period of seven (7) years; provided that for any year in which there has been no material change in the identity of Persons having a Beneficial Interest in the Proposed Project, as disclosed in the last

Disclosure Statement filed, the Applicant shall notify in writing the City Clerk to that effect.

SECTION 31A-7. Penalties.

1. **Failure to File Updated Disclosure Statement; Security of Permits Issued.** If an Applicant who receives Zoning Relief fails subsequently to file an updated Disclosure Statement required by Section 31A-6, the Commissioner of Inspectional Services may take any action provided in law or equity to remedy such a violation of zoning. However, prior to seeking any remedy of such a violation for failure to file an updated Disclosure Statement, the Commissioner of Inspectional Services shall notify the Applicant, and any other Person who has a Beneficial Interest in the Proposed Project (including mortgagees) and who has previously notified the Commissioner of Inspectional Services to send notice to such Person, by certified mail of such failure, and advise said Applicant and Person that if the updated Disclosure Statement is not filed within forty-five (45) days of receipt of the notice, the Commissioner of Inspectional Services shall consider revoking the Proposed Project's building or occupancy permit as a result of such failure to file, or any other remedies available at law or in equity. If, within such forty-five (45) day period, any Person to whom the notice of failure to file was sent provides evidence to the Commissioner of Inspectional Services of due diligence in seeking the Applicant's filing of an updated Disclosure Statement, the Commissioner of Inspectional Services shall not revoke any building or occupancy permit for the Proposed Project, and no such revocation may take place so long as the due diligence to seek compliance is being undertaken. For the purpose of this regulation, "due diligence" shall

conclusively mean, but not be limited to, the diligent prosecution of a civil action to compel compliance with the requirement to file an updated Disclosure Statement.

2. **Falsification of Disclosure Statement.** Any Person who willfully files a Disclosure Statement required by this article which is false in a material matter shall be subject to the penalties of perjury pursuant to G.L. c. 268, Section 1A, and any other applicable criminal and civil penalties. If a court of competent jurisdiction determines that such a false statement in a material matter has been willfully filed, the Commissioner of Inspectional Services may take any action provided in law or equity to remedy such a violation of zoning. However, prior to seeking any remedy of such a violation for materially falsifying a Disclosure Statement, the Commissioner of Inspectional Services shall notify the Applicant, and any other Person who has a Beneficial Interest in the Proposed Project (including mortgagees) and who has previously notified the Commissioner of Inspectional Services to send notice to such Person, by certified mail of such falsification, and advise said Applicant and Person that if the true Disclosure Statement is not filed within forty-five (45) days of receipt of the notice, the Commissioner of Inspectional Services shall consider revoking the Proposed Project's Zoning Relief or building or occupancy permit as a result of such falsification, or any other remedies available at law or in equity. If, within such forty-five (45) day period, any Person to whom the notice of falsification was sent provides evidence to the Commissioner of Inspectional Services of due diligence in seeking the Applicant's filing of a true Disclosure Statement, the Commissioner of Inspectional Services shall not revoke any Zoning Relief or

M E M O R A N D U M

AUGUST 17, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY
AND STEPHEN COYLE, DIRECTOR

FROM: BRUCE A. SINGAL, SPECIAL COUNSEL *BAS*
FERRITER, SCOBBO, SIKORA, CARUSO
& RODOPHELE, P.C., BOSTON

SUBJECT: PROPOSED ARTICLE 31A OF THE BOSTON ZONING CODE,
REQUIRING FULL DISCLOSURE OF OWNERSHIP INTERESTS

EXECUTIVE
SUMMARY:

This Memorandum requests that the Authority authorize the advertisement of a public hearing for Thursday, September 14, 1989 at 2:30 P.M. on proposed Article 31A of the Boston Zoning Code in the Authority Board Room.

I. INTRODUCTION AND BACKGROUND

As Special Counsel to the Authority, I have been asked to analyze a proposed amendment to the Boston Zoning Code, Article 31A, which would require developers of large-scale development projects to disclose and identify all ownership interests in such projects. During the past few months, this analysis has consisted of reviewing the legal authority of the Zoning Commission to adopt the proposed amendment; revising the amendment to ensure that it falls within the Commission's statutory authority and that it sets forth clear, fair, and workable guidelines; and researching the existence of any similar policies throughout the country. In conjunction with the Authority's staff, a finalized version of the proposed Article has been drafted and is attached for the Board's consideration.

II. PROPOSED ARTICLE 31A

A. Underlying Legal and Policy Rationale for Disclosure of Ownership Interests

The review of legal authority supporting proposed Article 31A necessarily begins with the Zoning Commission's enabling act, St. 1956, c. 665. Because the disclosure required by the Article is linked to the purposes and objectives of the enabling act, the act furnishes a reasonable basis for requiring such disclosure.

Specifically, the following purposes are served by requiring the disclosure and identification of all persons having any ownership interest in the large-scale development project:

-- To inform public decision-makers and the public-at-large of the identity and extent of the interest held by all persons having any beneficial interest in property which is subject to public review and approval by the Zoning Commission or the Board of Appeal, and thereby improve municipal land use decisions and foster public understanding and trust of the process of such review and approval; and

-- To provide a process under which zoning officials making land use decisions can identify and avoid conflicts of interest.

We believe that the proposed Article 31A fulfills these purposes. We further believe that such purposes are either expressed or reasonably implied from the terms of the enabling act (c. 665), and thus could reasonably be construed to fall within the Zoning Commission's statutory authority to adopt zoning regulations.

Having reviewed the legal and policy rationales underlying full disclosure, we turn now to a review of the provisions of the proposed article itself.

B. Summary of Provisions

The proposed Article 31A would apply to any project which requires zoning relief (e.g. a building or use permit) and which involves the construction, enlargement, or change of use of a building or structure involving 100,000 or more square feet. Applicants for zoning relief for such large-scale projects would be required to file with the City Clerk, and with the agency from

which zoning relief is being sought, a disclosure statement signed under penalties of perjury.

The disclosure statement would be in the form attached as Appendix A to the proposed Article. In it, applicants would be required to state:

-- the true names and addresses of all parties and entities having any "beneficial interest"¹ in the proposed project;

-- the amount of their beneficial interest accurate to within 1/10 of one percent; and

-- the names and addresses of all firms employing attorneys, real estate brokers, architects, engineers, and other consultants and agents who have been involved in the application.

The disclosure statement must be circulated to all members of the Zoning Commission, Board of Appeal, and Authority who are eligible to vote upon the application for Zoning Relief. Furthermore, the disclosure statements are required to be updated annually for a period of seven years subsequent to the issuance of the first building permit. The updated statements must disclose any changes in information as to owners and ownership interests from previous years.

Any applicant who fails to file the required disclosure statement shall not be granted the requested zoning relief for a proposed project. If an applicant who has received zoning relief fails subsequently to file the updated statements listing changes in ownership interest prior to the issuance of the first building permit, the Zoning Commission or Board of Appeal shall give the applicant notice of such failure and allow 45 days for the applicant to file the updated statement. If the applicant does not do so, a hearing may be held to determine whether to revoke the previously granted zoning relief.

If, however, any person with a beneficial interest in the Project (including a mortgagee) uses due diligence to attempt to get the Applicant to file the updated Statement, then no

¹ "Beneficial interest" is defined as "any legal or equitable direct or indirect ownership interest, whether as an individual or through a partnership, corporation, trust, or other legal entity, or otherwise, or any actual or potential profit, benefit, or advantage resulting from any such ownership interest, or a contractual right to any such ownership interest, whether or not contingent."

revocation can take place. This ensures that the interests of innocent third parties are not unfairly impaired.

Finally, any person who willfully files a disclosure statement which is false in a material matter shall be subject to penalties of perjury and other applicable civil and criminal penalties. If a court determines that an applicant has willfully filed such a false statement, then if the statement is not cured within 45 days of notice of same, a hearing may be conducted to determine whether to request revocation of the project's building or occupancy permit.

C. Review of Disclosure Requirements Nationally

We have also reviewed state statutes from throughout the country and the BRA staff has reviewed zoning codes from twenty-six of the largest municipalities in the country. We have not, however, thus far located any statute or regulation anywhere in the country at the state, county, or local level which requires the disclosure of ownership interests to a greater extent than the proposed Article 31A.² This proposed article appears to be nearly unprecedented insofar as it would require disclosure of virtually all ownership interests before any zoning action could be taken, would extend the disclosure requirement to private as well as public land, would require periodic subsequent disclosures, and would allow revocation of zoning authority previously granted for willful and material violations of such disclosure requirements. If adopted, it thus appears that Article 31A could serve as one of the national models for the full disclosure of ownership interests by real estate developers.

Appropriate votes follow:

VOTED: That the Authority hereby authorizes the advertisement of a public hearing for Thursday, September 14, 1989 at 2:30 P.M. on proposed Article 31A of the Boston Zoning Code.

² The closest are probably the Fairfax County, Virginia Zoning Code, which does currently require such disclosure in applications for amendments to the zoning map and for variances, and the newly enacted Miami, Florida provision. Other states have passed statutes requiring disclosure in certain limited situations (e.g. for publicly owned land, condominiums, subdivided land).

building or occupancy permit for the Proposed Project, and no such revocation may take place so long as the due diligence to seek compliance is being undertaken. For the purpose of this regulation, "due diligence" shall conclusively mean, but not be limited to, the diligent prosecution of a civil action to compel compliance with the requirement to file a true Disclosure Statement.

SECTION 31A-8. Severability. The provisions of this article are severable, and if any such provision or provisions shall be held invalid by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this article.

Appendix A

Disclosure Statement Concerning Beneficial Interest
Required by Article 31A of the Boston Zoning Code

(1) Location: _____

(2) Applicant: _____

- (3) I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest (including the amount of their beneficial interest accurate to within one-tenth percent) in the above-listed property are listed below in compliance with the provisions of Article 31A of the Boston Zoning Code.

NAME AND RESIDENCE OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENTAGE INTEREST</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- (4) The undersigned also acknowledged and states that none of the above-listed individuals is an official elected to public office in the Commonwealth of Massachusetts, nor is an employee of the State Department of Capital Planning and Operations.
- (5) I hereby state, under the penalties of perjury, that the names and addresses of all firms and personal corporation employing attorneys, real estate brokers, architects, engineer, planners, and surveyors, and all other agents who have acted on behalf of any of the foregoing with respect to the application on the above-listed property are listed below in compliance with the provisions of Article 31A of the Boston Zoning Code.

NAME AND ADDRESS OF ALL FIRMS AND PERSONAL CORPORATIONS,
AND AGENTS WHO HAVE ACTED ON SAID APPLICATION:

NAME

ADDRESS

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SIGNED under the penalties of perjury.

Signature: _____

Date: _____

